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PETER L. BRADLEY

UNITED STATES ADMINISTRATIVE LAW COURT
U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

IN THE MATTER OF

PETER L. BRADLEY

FAA DOCKET NO., CP04WP0030
(Civil Penalty Action)
DMS NO.FAA 2005-20532 2-13

PETER L. BRADLEY'S MOTION
FOR DISMISSAL - RES JUDICATA
(CLAIM PRECLUSION) DUE TO
U.S.A. v. BRADLEY CR 00196 WHA

Courtroom: Administrative Law
Judge Richard C. Goodwin

Comes now Respondent Peter Bradley moving this court as follows:

1. For dismissal of this case as a violation of Respondent's Res Judicata rights in that the federal government previously indicted and dismissed Respondent in a case based on the same incident (U.S. v. Bradley, CR 00196 WHA).

Or In the alternative:

2. For preclusion from relitigating the issue whether on and about March 16, 2000, Respondent was legally unconscious in

that he was suffering from viral encephalitis which caused him to be delusional during Alaska Airline Flight No. 259 to San Francisco and to act in a bizarre manner; the issue having been fully litigated and Respondent's illness established in U.S. v. Bradley, CR 00196 WHA.

3. For preclusion from relitigating whether Respondent was legally unconscious and therefore not responsible for his bizarre behavior on March 16, 2000; the issue having been fully litigated and "legal unconsciousness" determined to be a complete defense to charges arising out of his behavior.

4. For dismissal of this case since Respondent's complete defense of "legal unconsciousness" prevents him from being held responsible for violating any FAA Regulations.

STATEMENT OF THE CASE

This case charges Peter Bradley (Respondent) with behavior violating Federal Aviation Administration (FAA) Regulations¹ on Alaska Airlines Flight #259 departing Puerto Vallarta, Mexico to San Francisco on March 16, 2000. However, Respondent was also charged with two violations of the United States Criminal Code for the same behavior on the same flight in U.S. v. Bradley CR §196 WHA.² (hereinafter "the Criminal Case"). The Criminal Case was fully resolved on September 30, 2002, when the indictment was dismissed by U.S. District Judge William A. Alsup following

¹ 14 CFR §91.11 (assaulted/threatened/intimidated and/or interfered with the crewmembers in the performance of their duties); 14 CFR §121.317 (failing to fasten seat belt and keep it fastened which "Fasten Seat Belt" sign is lit); 14 CFR §121.317(k) (failure to comply with crew instructions); 49 U.S.C. §46303(a) [concealing a dangerous weapon (a pocket knife) in flight].

² 49 USC 46504 (interference with crew members in performance of their duties); and 18 USC §32(a)(5) (violence against a person on an aircraft likely to endanger the safety of such aircraft).

Respondent's successful completion of an eighteen months PreTrial Diversion.³

STATEMENT OF FACTS

On March 16, 2000, Peter Bradley (Respondent) was a passenger on Alaska Airlines Flight #259, from Puerto Vallarta to San Francisco. Flight Attendants noticed Respondent's very bizarre behavior during the four hour flight before he broke into the cockpit, trying to crash the plane. He was subdued by crew and passengers and arrested by the FBI upon the plane's arrival in San Francisco.⁴

Defendant was charged by the United States for violating the federal criminal code on March 16th during the flight in U.S. v. Bradley, CR 00196 WHA. However, the case was unique in that the FBI interviews of the witnesses on the flight, provided a complete record of Respondent's behavior which could be used for a medical analysis of his actual behavior to determine the cause. In addition, there were two visits to Emergency Rooms following his arrest. He was transported to the locked ward of Stanford University Hospital where he was diagnosed as having suffered from viral encephalitis, causing him to be delusional on March 16th (and periodically) through the 18th.⁵

The Stanford Report was given to the prosecutor who submitted it to a neurologist at the University of California

³ Respondent's Exhibit G (hereinafter "Resp. Exh. G") "Indictments" 4/12/200; and "Stipulation and Order to Dismiss" 9/25/02. No Exhibits are attached to this motion. All exhibits referred to are being filed simultaneously entitled "Respondent's Witness List and Exhibit List".

⁴ A detailed statement of the facts concerning the March 16, 2000 flight and Respondent's subsequent arrest and criminal case and medical defense is being filed concurrently with this motion under "Declaration of Joyce B. Ladar and Peter L. Bradley's Statement of Facts".

⁵ [Resp. Exh B "Comprehensive Medical and Psychiatric Examination Report", Jamres R. Missett, M.D. Ph.D. 6/14/00, (hereinafter "Stanford Report"); and see Resp. Exh. B1 "Curriculum Vitae" of James R. Missett, M.D., Ph.D.]

Hospital, San Francisco. Dr. Holz agreed with the Stanford diagnosis. Both attorneys presented the supporting documents and the Stanford Report and Dr. Holz's letter to a doctor renown as a 'legal unconsciousness' expert.⁶ In Dr. Resnick's opinion, Respondent's behavior and the illness qualified as a classic 'legal unconsciousness' defense.

All the medical information and supporting data were provided to the court and the U.S. PreTrial Services (the agency monitoring Respondent during the pendency of the case) as a complete defense to the charges. The prosecutor agreed that a dismissal was appropriate. However, Judge Alsup asked the attorneys to get one more expert to conduct an independent investigation (i.e. not rely on the Stanford Report) as the basis for the diagnosis and expert opinion. Jeffrey R. Weiner, M.D. reviewed all documents (FBI interviews, the Magistrate's psychologist's letter, Mills Hospital ER notes, Alameda Hospital ER notes, Stanford doctors' medical notes and tests, etc.) and personally interviewed Respondent, his family (who had been with him the week before March 16th) etc. Dr. Weiner after the independent review reached the same diagnosis and opinion that Respondent presented a case of insanity or legal unconsciousness, although the latter was most appropriate).⁷

With Judge Alsup's approval, the parties entered into an Agreement for eighteen months of pre-trial diversion with dismissal if successfully completed.⁸ Respondent did successfully complete

⁶ Resp. Exh. C "Letter from Phillip J. Resnick, M.D.", Case Western Reserve University, 12/5/00; and see Resp. Exh. C1, "Curriculum Vitae of Phillip J. Resnick, M.D."

⁷ Resp. Exh. D "Letter from Jeffrey R. Weiner, M.D." Peninsula Psychiatric Associates

⁸ Resp. Exh. F. "Agreement for Pretrial Diversion", 4/25/01.

the diversion and Judge Alsup dismissed the Criminal Case.⁹

POINTS AND AUTHORITIES

Res Judicata Prevents Relitigation of This Case:

“Res judicata” or “claim preclusion” bars the ability to relitigate matters that have already been decided or could have been decided in order to avoid repetitive consideration of the same matters. Rivet v. Regions Bank, 522 U.S. 470, 474, 139 L.Ed.2d 912, 919, 925, 118 S.Ct. 921, (1998).

Peter Bradley’s behavior aboard Alaskan Airline flight 259 on March 15, 2000 has previously been litigated to final judgment in the United States v. Bradley, #00-CR 196 WHA (filed 4/12/00). The defense of ‘legal unconsciousness’ survived expert medical scrutiny, and was completely argued and reviewed. The rarely used defense was a primary focus of many in chamber discussion between the court and attorneys. The prosecution agreed with and joined in presenting the defense to the court and requesting a dismissal. The attorneys stipulated to an Order unsealing the medical documents, to an agreement for the conditions of diversion, and to the Order of Dismissal.¹⁰ The case was fully resolved in a dismissal by United States District Judge William H. Alsup on September 25, 2002, following the successful completion of a diversion program requiring eighteen months of neurological monitoring.

The general rule of res judicata

“ . . . provides that when a court of competent jurisdiction has entered a final judgments on the merits of a cause of action, the parties to the suit and

⁹ Resp. Exhibit G “Stipulation and Order to Dismiss, 9/25/02

¹⁰ Resp. Exh. E, “Stipulated Order Unsealing Documents, 5/9/01; Resp. Exh. G., “Agreement for Pretrial Diversion, 4/25/91; and Resp. Exh. G “Stipulationa nd Order to Dismiss, 9/25/02.

their privies are thereafter bound ' not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' (citation omitted) The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment."

Sea-Land Services, Inc. v. Gaudet, 414 U.S. 573, 578-579, 39 L.Ed.2d. 9, 94 S.Ct. 906 (1974); see Commissioner v. Sunnen, 333 U.S. 591, 597, 92 L.Ed. 898, 68 S.Ct. 715, (1948).

The Federal Government Functions Under One Administration, Whether Operating as the FAA or the Justice Department, i.e. the Agencies Are in Privity.

The federal government is one super authority controlled by one administration, whether represented by the Justice Department or represented by the FAA. The agencies within the government must therefore be in privity. The United States Criminal Code, like the FAA Regulations are aimed at punishing the wrongdoers on federal property or under federal supervision. For the purposes of the doctrine of res judicata, privity represents such an identity in interest that one party represents the same legal rights as another, consequently the judgment is binding on both. (Ballentines Law Dictionary, 3rd Edition, p. 996)

Res Judicata is not Defeated by A New Legal Theory or Use of a Different Law

The fact that the first case was brought by the Justice Department using the federal criminal code and this case is brought by the FAA using FAA Regulations, and even that this case includes a concealed weapon count which was not charged in the Justice Department case, cannot pierce the shield of Res Judicata because both cases are based upon the same cause of action.

“A cause of action consists of ‘a single core of operative facts’ which give rise to a remedy. [] A mere change in the legal theory does not create a new cause of action.”

Alexander v. Chicago Park Dist. 773 F.2d 850, 854 (___ Cir. ____), cert denied 475 U.S. 1095, 89 L.Ed.2d 894, 106 S.Ct. 1492.

Similarly, bringing an action under different laws does not establish a new claim if both actions are based on the same transaction or foundation of operative facts and the decision is based on the merits. Boateng v. InterAmerican University, 210 F.3d 56, 62 (1st Cir 2000), Cert denied 531 U.S. 904, 148 L.Ed.2d 176, 121 S.Ct. 245 (preclusion requires an identity of the operative facts, not identity of legal theory). Armstrong v. Norwest Bank, 964 F.2d 797, 802, (C.A. 8th 1992) (res judicata prevents second action based on same nucleus of operative facts).

Res judicata is claim preclusion. What plaintiff litigated and what parties could have litigated but did not, whether claim or defense, are foreclosed from further suit. Cooper v. Federal Reserve Bank, 1984, 104 S.Ct. 1799, 1801 n.5, 466 U.S. 284, 287 n.5, 80 L.Ed.2d 302.

Court Ordered Diversion and Dismissal Qualifies as a Final Judgment:

“Claim preclusion operates between the parties and their privies by virtue of the final judgment. Thus principles of merger and bar may apply even though a judgment results by default, consent, or dismissal with prejudice” Young Engineers v. U.S. International Trade Commission, 721 F.2d 1305, 1314. (Fed. Cir. 1093). (discussing the res judicata effect a final judgment between private parties of a federal district court case can have on a subsequent Trade Commission patent infringement case). The

government must be barred from litigating the same facts where the parties entered into a consent judgment and the intent to preclude material facts can be inferred from the agreement of the parties and/or the words of the judgment. *Id* at 1316; see In re Justice Oaks, II, Ltd., C.A.11th 1990, 898 F.2d 1544, 1549, cert. Denied 111 S.Ct.387 498 U.S. 959, 112 L.Ed.2d 398. Assistant U. S. Attorney David Hall (hereinafter AUSA David Hall) and Respondent stipulated to diversion in USA v. Bradley with Judge Alsup's consent and agreement to dismiss the case upon its successful conclusion. This finally resolved the case.

Because the Validity of Respondent's Defense of "Legal Unconsciousness" Was Decided by the Criminal Case, and Respondent Was Found to Be Not Responsible for His Actions on March 16, 2000, Collateral Estoppel Precludes the Federal Government From Relitigating His Actions On That Date.

Collateral estoppel is issue preclusion of the material facts that were litigated between the parties. (Cooper v. Federal Reserve Bank, 1984, 104 S.Ct. 1799, 1801 n.5, 466 U.S. 284, 287 n.5, 80 L.Ed.2d 302.)

Under collateral estoppel, once a court decides an issue of fact or law necessary to its judgment, that decision precludes relitigation of the same issue between the same parties. Kremer v. chemical Construction, Corp. 1982, 456 U.S. 461, 466 n. 6, 72 L.Ed.2d 262.102 S.Ct. 1883, 1889 n 6.

Conclusion:

The criminal case extinguished all rights, of the parties and privies, to remedies against respondent with respect to all or any part of the occurrences on Alaska Airlines. Restatement Second of Judgments, 1981, §24.

PRAYER

1. The Court make a finding that both U.S. v. Bradley and the FAA case In the Matter of Bradley involved federal litigation against Respondent for his behavior on March 16, 2000.
2. The Court find Res Judicata requires dismissal of this FAA case due to U. S. v. Bradley, 00196 WHA.

Or, in the alternative:

3. The Court find that issue preclusion bars the FAA from disputing that Respondent was 'legally unconscious' on March 16, 2000 and cannot be held responsible for his actions on that date, because in the federal criminal case the parties, with the approval of Judge Alsup, decided the issue.
4. The Court find that 'legal unconsciousness' is a complete defense to the FAA charges, and the FAA case against Respondent is dismissed.

Dated: August 7, 2005

Respectfully Submitted,



JOYCE B. LADAR

IN RE MATTER OF PETER L. BRADLEY
FAA Docket No. CP04WP0030
DMS FAA Case No. 2000WP750229

PROOF OF SERVICE

The undersigned hereby certifies that his/her business address is 1916 Vallejo Street, San Francisco, California, 94123 and she is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that on this date she caused copies of

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(CLAIM PRECLUSION) DUE TO U.S.A. v. BRADLEY CR 00196 WHA

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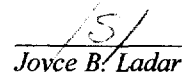
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THE HONORABLE RICHARD C. GOODWIN
Administrative Law Judge
Office of Hearings, M-20, Room 5411
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Fax: (202) 366-7536

I declare under penalty of perjury that the foregoing is true and correct, executed this 9th day of August, 2005, in San Francisco, County of San Francisco, California.


Joyce B. Ladar